HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.3298 of 2004 &
X-Objections No.1 of 2005

Date of decision : 09.02.2007

Shyam Lal and others **.....Appellants**

versus

Sham Lal and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present: Mr.Arun Singal, Advocate, for the appellants
Mr.Ashwani Talwar, Advocate, for the respondents.

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JUDGMENT

HEMANT GUPTA, J.

The plaintiffs are in second appeal aggrieved against the judgment and decree passed by the Court below, whereby the suit for declaration to the effect that the plaintiffs are owners in possession of the suit land and for correction of the revenue record, was dismissed for the reasons that the Civil Court has no jurisdiction to try and entertain the present suit.

A decree for pre-emption of the land measuring 15 Bighas–19 Biswas on payment of Rs.8198.75 paise, in favour of one Rulia and Banwari, was passed by the learned trial Court on 16.2.1962. It is the case of the plaintiffs that due to mistake, mutation consequent to the decree, was sanctioned in favour of Banwari i.e. predecessor in-interest of the defendants, though Rulia Ram remained in possession of the half share. It is also pointed out that Banwari had purchased another land

measuring 14 Bighas–1 Biswa. After consolidation, the suit property came to be allotted in lieu of the aforesaid land in which Rulia had 8/15th share. Taking Advantage of the wrong entries in the revenue record, Banwari suffered a collusive decree on 15.3.1984, in favour of his sons. The said decree also became the subject matter of the challenge in the present suit. The plaintiffs are the successors in-interest of Rulia.

The land in dispute was acquired by the State for a public purpose vide notification dated 23.2.1985 under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act'). The award was announced by the Land Acquisition Collector on 27.9.1985. It was that stage, it came to their notice that neither the name of Rulia nor his legal heirs found mentioned in the revenue record, which led to filing of the present suit. The defendants denied the claim of the plaintiffs and took a stand that the pre-emption money, in pursuance of the decree for pre-emption was deposited by Banwari alone and that possession was taken over by Banwari alone. The mutation has been, thus, sanctioned rightly in favour of Banwari.

On the basis of the documents produced on record, the learned trial Court held that Rulia was owner to the extent of 321 Biswas of the agricultural land on the basis of judgment and decree dated 16.2.1962. After consolidation, out of the entire property measuring 602 Biswas, Rulia has right, title or interest only to the extent of 321/1204 shares. It is also held that mutation No.2979, Exhibit P-5, does not create absolute right in favour of Banwari. It was also held that the possession of the defendants over the suit property cannot be treated as adverse. However, it was held that the remedy of the plaintiffs is to seek reference

under Section 30 of the Act to decide the question of inter-se title and to receive the compensation. Consequently, the Civil Court has no jurisdiction to entertain the suit. In appeal against the said award, the learned First Appellate Court affirmed the findings recorded by the learned trial Court and consequently, dismissed the appeal. Both the Court below have relied upon the judgment reported as "***1996 S.C.-523, Laxmi Chand and others versus Gram Panchayat, Kararia and others",*** to hold that the jurisdiction of the Civil Court is barred.

The present appeal was admitted for hearing on 20.8.2004, on the following substantial question of law:-

> "Whether Section 30 of the Land Acquisition Act bars the jurisdiction of the Civil Courts?"

Subsequently, the defendants filed the Cross-objections. However, by way of Cross-objections, the defendants have sought to dispute the findings recorded by the learned Courts below in respect of share of Rulia found in the disputed land on the basis of the judgment and decree, Exhibits PA and P-11.

It was found that plea of adverse possession is not available to Banwari as the deposit of the entire pre-emption money is including that of share of Rulia and, therefore, Rulia is owner to the extent of 1/2th share. It was also held that the plea of adverse possession would be available to Banwari only if he had not paid the pre-emption money on behalf of Rulia and continues to cultivate the land in dispute, denying his title. Therefore, the plea of adverse possession over the land falling to the share of Rulia was declined. The said finding cannot be said to be

suffering from any patent illegality or irregularity, which may give rise to any substantial question of law. In fact, no argument was raised by the learned counsel for the respondents in this regard.

Both the Courts have relied upon the judgment of Hon'ble Supreme Court in *Laxmi Chand's case (supra)*, to return a finding that the jurisdiction of Civil Court is barred. A perusal of the said judgment shows that in the said proceedings, the challenge was to the acquisition of the land by way of notification under Section 4 of the Act. In the aforesaid case, the notification under Section 4 of the Act was earlier challenged by way of a Civil Writ Petition before the Hon'ble High Court, but the same was dismissed. Thereafter, the validity of the acquisition and the award announced by the Land Acquisition Collector under Section 11 of the Act was challenged by way of a Civil Suit. The said Civil Suit was dismissed. In that factual background, the Court held to the following effect:-

> "It would, thus, be clear that the scheme of the Act is complete in itself and thereby the jurisdiction of the Civil Court to take cognizance of the cases arising under the Act, by necessary implication, stood barred. The Civil Court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the constitutional Courts, viz., the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extra-ordinary power. Barring thereof, there is no power to the Civil Court."

The said judgment has no applicability in the facts of the present case where the dispute between the parties is regarding

establishment of title over the suit property on the basis of decree for pre-emption. There is no challenge to the acquisition proceedings or to the amount of compensation determined under the Act. If the plaintiffs succeed in proving their title over the suit property, the plaintiffs would be entitled to the declaration sought for. In fact, the Hon'ble Supreme Court of India, in ***"A.I.R.1966 SUPREME COURT –237, Dr.G.H.Grant versus The State of Bihar",*** has considered the scope of powers of the Collector under Section 30 of the Act and held to the following effect:-

> "In determining the amount of compensation, which may be offered, he has, it is true, to apportion the amount of compensation between the persons known or believed to be interested in the land of whom or of whose claims, he has information whether or not they have appeared before him. But the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation; the award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation; that dispute has to be decided either in a reference under Section 18 or under Section 30 or in a separate suit. Payment of compensation, therefore, under Section 31, to the person declared by the award to be entitled thereto discharges the State or its liability to pay compensation (Subject to any modification by the Court), leaving it open to the claimant to compensation to agitate his right in a reference under Section 30 or by a separate suit."

A Division Bench of this Court in ***"1992 (1), Revenue Law Reporter-584, Malkiat Singh versus Harnek Singh and others",*** held

that the Civil Court jurisdiction has not been excluded to determine the question of title or possession of the parties. The Land Acquisition Act does not debar the Civil Court jurisdiction except to the extent of the amount of compensation.

Earlier, another Division Bench of this Court, in ***"AIR 1984 Punjab and Haryana-294, Karnail Singh versus Jagir Singh"***, has held that the suit for recovery of the compensation amount is maintainable as the award is final so far as the Collector and the persons interested, as defined under the Land Acquisition Act, 1894, are concerned, but not so among the persons interested in the Land. It was held to the following effect:-

> "From the above observations, it is clear that the award is final so far as the Collector and the persons interested are concerned, but it is not so among the persons interested in the land. The persons interested can get their dispute resolved either by asking the Collector to make a reference under Section 18 of the Act or by a separate suit. The same view had been expressed earlier in Hemanta Kumar Banerjee versus Satish Chandra Banerjee, AIR 1941 Cal.635; Hitkarini Sabha versus Jabalpur Corporation, AIR 1958 Madh.Pra-339, and Shri Deo Sansthan Chinchwad versus Chintaman Dharnidhar Deo, AIR 1962 Bom.214. Similar matter came up before me while sitting in single Bench in Jog Raj versus Banarsi Dass (1978) 80 Pun LR 258; (AIR 1978 Punj & Har-189). I also took the same view and held that a suit is maintainable for recovery of an amount under proviso to Section 31 (2) of the Act."

In view of the aforesaid judgments, I am of the opinion that

the findings recorded by the Courts below that the Civil Court has no jurisdiction to try and entertain the present suit, is not sustainable in law. The award announced by the Collector in respect of acquisition of the land is conclusive as between the persons interested and the Collector in respect of the amount of compensation. But the jurisdiction of the Civil Court to entertain the dispute regarding entitlement of the said amount of compensation is not barred.

Consequently, while dismissing the cross-objections filed by the defendants, the present appeal is accepted. The judgment and decree passed by the learned Courts below is set-aside and the suit of the plaintiffs is decreed to the extent that plaintiffs are owners of 321/1204 shares of the entire suit land and thus entitled to the proportionate compensation amount.

(HEMANT GUPTA)
JUDGE

February 09, 2007
**mohinder*